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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/671,905
Filing Date: September 29, 2003
Appellant(s): HASHIMOTO ET AL.

George C. Beck (38,072)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/16/09 appealing from the Office action mailed 11/26/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7,089,304	GRAHAM	8-2006
6,687,247	WILFORD ET AL	2-2004
6,118,771	TAJIKA ET AL	9-2000
6,032,197	BIRDWELL ET AL	2-2000
6,112,323	MEIZLIK ET AL	8-2000
6,188,691	BARKAI ET AL	2-2001
6,577,609	SHARONY	6-2003
6,574,770	DAUDELIN	6-2003
5,793,976	CHEN ET AL	8-1998
6,646,987	QADDOURA	11-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 7,089,304 by Graham (Graham) in view of U.S. Patent 6,687,247 by Wilford et al. (Wilford) and U.S. Patent 6,118,771 by Tajika et al. (Tajika).

With respect to claims 1 and 11, Graham teaches a packet transmission system comprising:

packet identification information addition means for adding packet identification information to a packet if the packet is to be transmitted (Col. 2 lines 35-63: sequence number is added to identify the packet); and

transmission means for transmitting said packet that is allocated said packet identification information a plurality of times even if the packet transmission system does not receive a retransmission request from a reception side (Col. 2 lines 35-63: redundant packets sent without a retransmit request),

wherein said transmission means transmits said packet that is allocated said packet identification information and a redundant packet which is a duplicate of said packet that is allocated said packet identification information (Col. 2 lines 35-63: redundant packets are duplicates), and

wherein said packet and said redundant packet transmitted with the same packet identification information contains an identical sequence number (Col. 2 lines 35-63: redundant packets have the same sequence number as this is how duplicates are identified by the receiving side).

Graham does not explicitly teach sorting means for sorting a packet according to whether the packet should be transmitted in a unicast or in a simultaneous packet form by multicast or broadcast and adding packet identification information to a packet sorted to be transmitted in simultaneous form. Wilford teaches sorting of packets according to whether the packet should be transmitted in a unicast or in a simultaneous packet form by multicast or broadcast (Col. 10 lines 21-31: separate unicast and multicast FIFOs). Tajika teaches that packets to be transmitted as multicast packets are allocated packet identification information (Col. 32 lines 57-67).

It would have been obvious to one of ordinary skill in the art to modify Graham as indicated by Wilford and Tajika as providing sorting as in Wilford can improve transmission speed (Wilford: Col. 2 lines 43-50) and using packet identification information for multicasting is desirable in Graham for providing improved reliability (In graham Col. 2 lines 42-46).

With respect to claim 3, Graham further teaches wherein said packet is any one of a multicast packet and a broadcast packet (In Wilford Col. 10 lines 21-32)(In Tajika Col. 32 lines 57-67).

With respect to claim 5, Graham teaches said packet identification information addition means adds one said packet identification information to each of a plurality of packets to be transmitted (Col. 2 lines 35-63: sequence number is added to identify the packet).

With respect to claim 9, Graham teaches determination means for determining whether information equal in type to the packet identification information to be added by

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the packet identification information addition means is already added to said packet to be transmitted, wherein if a determination result of said determination means is positive, said packet to be transmitted is transmitted while bypassing said packet identification information addition means and said transmission means (Col. 2 lines 35-63: sequence information is not added twice).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Wilford and Tajika and in further view of U.S. Patent 6,032,197 by Birdwell et al. (Birdwell).

With respect to claim 2, Graham teaches all the limitations of claim 1, but does not explicitly disclose compression means for deleting a header of a third OSI layer and a header of a fourth OSI layer of the packet to be transmitted, and making data of a fifth OSI layer carried on a second OSI layer before adding the packet identification information to the packet to be transmitted.

Birdwell teaches a packet header compression technique that allows one to selectively compress packet headers by removing select headers from the packet (Col. 8 lines 57-67). This can include headers from the third OSI layer and the fourth OSI layer (In Birdwell: Col. 5 lines 21-30: IP (third) and UDP (fourth) headers for example).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Graham in view of Wilford and Tajika and modify it as indicated by Birdwell such that it further comprises means for

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deleting a header of a third OSI layer and a header of a fourth OSI layer of the packet to be transmitted, and making data of a fifth OSI layer carried on a second OSI layer before adding the packet identification information to the packet to be transmitted. One would be motivated to have this, as it is desirable to improve transmission efficiency through packet compression techniques, including removing particular portions of the packet (In Birdwell: Col. 1 lines 32-43).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Wilford and Tajika and in further view of U.S. Patent 6,112,323 by Meizlik et al. (Meizlik).

With respect to claim 6, Graham does not explicitly teach reception means for receiving information on a simultaneous packet loss frequency at the reception side per certain period, wherein said transmission means changes a transmission parameter based on said information on the simultaneous packet loss frequency.

Meizlik teaches reception means for receiving information on a simultaneous packet loss frequency at the reception side per certain period, wherein said transmission means changes a transmission parameter based on said information on the simultaneous packet loss frequency (Col. 15 lines 5-26: pacing algorithm monitors packet loss and adjust transmission rates accordingly).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take Graham and modify it such that it further comprises reception means for receiving information on a simultaneous packet loss frequency at

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the reception side per certain period, wherein said transmission means changes a transmission parameter based on said information on the simultaneous packet loss frequency. One would be motivated to have this as it provides the benefit of rapid transmission with as little packet loss as possible (In Meizlik Col. 15 lines 27-29).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of U.S. patent 6,188,691 by Barkai et al. (Barkai).

With respect to claim 7, Graham does not explicitly disclose said transmission means transmits said packet allocated said packet identification information, with a MAC (Media Access Control) address common to a plurality of reception devices set as a destination address. Barkai teaches transmission of data can be accomplished through the use of a MAC address common to a plurality of reception devices (In Barkai: Col. 4 lines 5-59, particularly lines 12-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to take the system disclosed by Graham and modify it as indicated by Barkai such that said transmission means transmits said packet allocated said packet identification information, with a MAC (Media Access Control) address common to a plurality of reception devices set as a destination address. One would be motivated to have this, as it is desirable to be able to associate particular traffic with a common MAC address for network efficiency and easy administration (In Barkai: Col. 2 lines 4-34 and lines 62-67).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Barkai and in further view of Meizlik.

With respect to claim 8, Graham in view of Barkai does not explicitly disclose means for retransmitting said packet if the packet transmission system does not receive an acknowledgement of transmission of said packet.

Meizlik teaches means for retransmitting said packet if the packet transmission system does not receive an acknowledgement of transmission of said packet (Col. 28 lines 49-64: unacknowledged packets are retransmitted).

It would have been obvious to one of ordinary skill in the art to use the means for retransmitting as taught by Meizlik for retransmitting the packets delivered in Graham in view of Barkai. Using the known technique of retransmitting packets if the transmission system does not receive an acknowledgement for reliably sending packets would have been obvious to one of ordinary skill.

Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Wilford and Tajika and in further view of U.S. Patent 6,577,609 by Sharony (Sharony).

With respect to claim 10, Graham in view of Wilford and Tajika teaches at least all the limitations of claims 1, 3,5 and 9, and further teaches that the invention can be practiced in networking environments (In Graham: Col. 4 lines 61-67).

Graham does not explicitly disclose the network environment of a wireless LAN base station. Sharony teaches that a common environment for multicast data

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transmissions includes a wireless LAN including a base station or access point (In Sharony: Abstract and Col. 1lines 18-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Graham and modify it as indicated by Sharony such that a wireless LAN base station comprises the packet transmission system. One would be motivated to have this, as the advantages of Graham's system apply to networking environments (In Graham: Col. 4 lines 61-67) and would therefore extend to a wireless LAN environment including a base station.

Claims 12 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,574,770 by Daudelin et al. (Daudelin).

With respect to claim 12, Daudelin teaches a packet reception system comprising:

reception means for receiving duplicate packets that are allocated packet identification information once or a plurality of times without a retransmission request (Col. 2 lines 48 - Col. 3 line 4 and Col. 6 lines 46-64: endpoint can receive duplicate packets based on retransmissions that are not requested - sender timeout with retry);

sorting means for sorting the received packets according to whether the packet is allocated packet identification information (Col. 2 lines 48 - Col. 3 line 4 and Col. 6 lines 46-64: receiver determining that a packet was allocated packet identification information);

determination means for determining, if the received packet is sorted as a packet allocated packet identification information by the sorting means, whether the received packet is a duplicate of a packet that is previously received by the reception means (Col. 2 lines 48 - Col. 3 line 4 and Col. 5 lines 30-37 : receiver can determine duplicates based on packet identification information); and

discard means for discarding the received packet if a determination result of said determination means is positive (Col. 2 lines 48 - Col. 3 line 4 and Col. 5 lines 30-37: discards duplicates if packet already received),

wherein each of said duplicate packets includes a plurality of higher level packets (Col. 4 lines 1-8 and Col. 6 lines 1-17: packets contain higher level packets - higher link levels/layers).

Daudelin does not explicitly disclose sorting means for sorting the received packets according to whether each of the received packets is a simultaneous packet or a unicast packet. Wilford teaches sorting of received packets according to whether the packets are in a unicast or in a simultaneous packet form (Col. 45 lines 49-65: separate unicast and multicast FIFOs).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Daudelin as indicated by Wilford as providing sorting as in Wilford can improve transmission speed (Wilford: Col. 2 lines 43-50).

With respect to claim 14, Daudelin further teaches each of said packets is any one of a multicast packet and a broadcast packet (Col. 7 lines 64 - Col. 8 line 10).

With respect to claim 18, Daudelin further teaches response means for transmitting an acknowledgment to a sender when said packets are received (Col. 8 lines 57-67).

With respect to claim 21, Daudelin further teaches a wired LAN terminal (Col. 3 lines 17-49)

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,574,770 by Daudelin et al. (Daudelin) in view of Wilford and in further view of U.S. Patent 6,032,197 by Birdwell et al. (Birdwell).

With respect to claim 13, Daudelin in view of Wilford teaches all the limitations of claim 1, but does not explicitly disclose each of said packets received has a structure in which data of a fifth OSI (Open Systems Interconnection) layer is directly carried on a second OSI layer, and the packet reception system further comprises restoration means for restoring a header of a third OSI layer and a header of a fourth OSI layer of each of said packets received.

Birdwell teaches a packet header compression technique that allows one to selectively compress packet headers by removing select headers from the packet (Col. 8 lines 57-67). This can include headers from the third OSI layer and the fourth OSI layer (In Birdwell: Col. 5 lines 21-30: IP (third) and UDP (fourth) headers for example). The headers will be restored on the receiving end (Col. 9 lines 18-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Daudelin in view of Wilford and

modify it as indicated by Birdwell such that it further comprises each of said packets received has a structure in which data of a fifth OSI layer is directly carried on a second OSI layer, and the packet reception system further comprises restoration means for restoring a header of a third OSI layer and a header of a fourth OSI layer of each of said packets received. One would be motivated to have this, as it is desirable to improve transmission efficiency through packet compression techniques, including removing particular portions of the packet (In Birdwell: Col. 1 lines 32-43).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,574,770 by Daudelin et al. (Daudelin) in view of Wilford and in further view of U.S. Patent 5,793,976 by Chen et al. (Chen).

With respect to claim 16, Daudelin in view of Wilford teaches all the limitations of claim 12, but does not explicitly disclose counting means for counting a simultaneous packet loss frequency per certain period and transmission means for transmitting information on said simultaneous packet loss frequency.

Qaddoura teaches counting means for counting a simultaneous packet loss frequency per certain period and transmission means for transmitting information on said simultaneous packet loss frequency (Col. 9 lines 15-57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Daudelin in view of Wilford and modify it as indicated by Qaddoura such that it further comprises counting means for counting a simultaneous packet loss frequency per certain period and transmission

means for transmitting information on said simultaneous packet loss frequency. One would be motivated to have this, as there is need for collecting information related to performance monitoring in network systems (In Chen: Col. 4 lines 20-39).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,574,770 by Daudelin et al. (Daudelin) in view of Wilford and in further view of U.S. patent 6,188,691 by Barkai et al. (Barkai).

With respect to claim 7, Daudelin in view of Wilford teaches all the limitations of claim 12, but does not explicitly disclose said transmission means transmits said packet allocated said packet identification information, with a MAC (Media Access Control) address common to a plurality of reception devices set as a destination address.

Barkai teaches transmission of data through can be accomplished through the use of a MAC address common to a plurality of reception devices (In Barkai: Col. 4 lines 5-59, particularly lines 12-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to take the system disclosed by Daudelin in view of Wilford and modify it as indicated by Barkai such that said transmission means transmits said packet allocated said packet identification information, with a MAC (Media Access Control) address common to a plurality of reception devices set as a destination address. One would be motivated to have this, as it is desirable to be able to associate particular traffic with a common MAC address for network efficiency and easy administration (In Barkai: Col. 2 lines 4-34 and lines 62-67).

Claim 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,574,770 by Daudelin et al. (Daudelin) in view of Wilford and in further view of U.S. Patent 6,646,987 by Qaddoura (Qaddoura).

With respect to claim 19, Daudelin in view of Wilford teaches all the limitations of claim 12, and further teaches detection means for detecting whether said reception means have received the duplicate packets at least one or have not received the duplicate packets at all (Col. 2 lines 48 - Col. 3 line 4 and Col. 5 lines 30-37: receiver can determine duplicates based on packet identification information), and means for causing a plurality of higher level packets to be included in a packet to be transmitted (Col. 4 lines 1-8 and Col. 6 lines 1-17: packets contain higher level packets - higher link levels/layers).

Daudelin in view of Wilford does not explicitly disclose the transmission being based on a frequency with which said reception means have not received the duplicate packets at all. Qaddoura teaches increasing the packet size based on the frequency of errors (i.e. - less errors mean less retransmissions and less duplicate packets) (Col. 7 lines 22-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Daudelin in view of Wilford and modify it as indicated by Qaddoura such that it further comprises means for causing a plurality of higher level packets to be included in a packet to be transmitted based on the frequency with which said reception means have not received the duplicate packets

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at all. One would be motivated to have this, as it provides for a higher throughput (In Qaddoura: Col. 7 lines 29-30).

With respect to claim 23, Daudelin further teaches a wired LAN terminal (In Daudelin: Col. 3 lines 17-49)

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daudelin in view of Wilford and in further view of U.S. Patent 6,577,609 by Sharony (Sharony).

With respect to claim 20, Daudelin in view of Wilford teaches at least all the limitations of claims 12 and 18, and further teaches that the invention can be practiced in commonplace networking environments such as LAN networks (Col. 3 lines 17-49).

Daudelin in view of Wilford does not explicitly disclose the environment of a wireless LAN terminal. Sharony teaches that a common environment for data transmissions includes a wireless LAN including a base station or access point (In Sharony: Abstract and Col. 1 lines 18-34 and Col. 7 lines 21-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Daudelin in view of Wilford and modify it as indicated by Sharony such that a wireless LAN terminal comprises the packet reception system. One would be motivated to have this, as the advantages of Daudelin's system (In Daudelin: Col. 2 lines 18-25) apply to common networking environments such as LAN environments (In Daudelin: Col. 3 lines 17-49) and would therefore extend to a wireless LAN terminal environment.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daudelin in view of Wilford and Qaddoura as applied to claim 19 above, and further in view of Sharony.

With respect to claim 22, Daudelin in view of Wilford and Qaddoura teaches all the limitations of claim 19, a and further teaches that the invention can be practiced in commonplace networking environments such as LAN networks (Col. 3 lines 17-49).

Daudelin in view of Wilford and Qaddoura does not explicitly disclose the environment of a wireless LAN terminal. Sharony teaches that a common environment for data transmissions includes a wireless LAN including a base station or access point (In Sharony: Abstract and Col. 1 lines 18-34 and Col. 7 lines 21-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Daudelin in view of Wilford and Qaddoura and modify it as indicated by Sharony such that a wireless LAN terminal comprises the packet transmission and reception system. One would be motivated to have this, as the advantages of Daudelin's system (In Daudelin: Col. 2 lines 18-25) apply to common networking environments such as LAN environments (In Daudelin: Col. 3 lines 17-49) and would therefore extend to a wireless LAN terminal environment.

(10) Response to Argument

Argument 1: Claims 1-3 and 5-11

Summary of Issue argued pages 9-12 of brief, under sections B. and C.: *Prima facie case of obviousness not established*

1. Appellant argues on page 11 of the brief:

“ In other words, Wilford is directed to minimize packet delay by sorting multicast and unicast packets into separate FIFOs and converting multicast packets that are sorted out to unicast packets. Thus, inherently, if the packets to be transmitted include only unicast packets and no multicast packet, such an advantage of "low latency routing based on packet priority" would not be achieved.

... Throughout Graham, the packets (metering packets) are generated by a client and transmitted to the census service (Graham Col. 2 lines 28-30). In other words, in Graham, only unicast packets (packets transmitted from a client to a census service) are to be transmitted. No multicast packet is to be transmitted.

Thus, in contrast to allegations set forth the Final Action alleges, the step of sorting unicast and multicast packets of Wilford, if added to the Graham method, would not improve the process speed of the Graham method and indeed would slow down the processing speed because the extra (not needed) sorting step would inherently take extra time and generate extra cost.”

Examiner's response to Argument 1:

Appellant's argument relies on two key points. First, that the advantage of Wilford is not realized when only unicast packets are involved. And second, that Graham only utilizes unicast technology in communicating packets.

While not necessarily agreeing with appellant's interpretation on the first point, the examiner intends to show that appellant is incorrect in their second point and thus

their argument is not sufficient. No where in Graham is there an explicit teaching of only using unicast technology. In fact, Graham specifically states,

“The Hypertext Transfer Protocol (HTTP) is one type of well-known request/response protocol. Communication between client 210 and census service 232d **may use some other communication protocol. However, the present invention is in no way limited to the use of any particular communication protocol or any particular network topology.**” (emphasis added) (In Graham: Col. 6 lines 24-31)

Clearly, this description not only explicitly indicates that any particular communication protocol may be used, but also indicates that any particular network topology may be used. Certain network topologies may necessitate or benefit from the use of certain protocols such as multicast or broadcast. As such, Graham is in no way limited to unicast as argued by appellant, and thus the second key point of their argument is incorrect. The examiner asserts a proper *prima facie* case of obviousness has been established with the grounds of rejection presented.

The examiner notes this response also applies to the arguments under section C. on page 12 of the appeal brief. Section C. arguments rely on the same logic presented above.

Argument 2: Claims 12-14 and 16-23

Summary of Issues on pages 13-16: *Daudelin fails to teach at least “reception means capable of receiving duplicate packets that are allocated packet identification information once or a plurality of times without a retransmission request” as recited in claim 12.*

2.A Appellant argues on pages 13-14 of the brief:

Appellant begins with their interpretation of the claims based on the specification. Appellants then describe the deficiency of Daudelin, stating

" In other words, a pending retry timer of Daudelin would only be started in absence of receiving a receiver acknowledgement from the reception side. When such a receiver acknowledgement is received, the pending retry timer would not be started. In such a case, the packet having been previously sent would not be sent again to the receiver (the packet is removed from the head of its queue). Thus, Daudelin fails to teach "reception means for receiving duplicate packets that are allocated packet identification information once or a plurality of times without a retransmission request" as recited in claim 12."

Examiner's response to argument 2.A:

The examiner is not entirely clear the point appellant is trying to argue. It seems as if appellant is arguing that in one particular instance, where perhaps an acknowledgment is immediately received for a specific identified packet, there is no duplication of that packet and subsequently there is no receiving of duplicate packets.

Essentially it seems the argument is Daudelin does not duplicate the packet for every packet. However, the claims do not state that every packet is necessarily duplicated. The claims only state that the reception means is for receiving duplicate packets. There is no limitation stating, for example, that every single packet being received by the reception means has an associated duplicate packet. Clearly Daudelin teaches reception means for receiving duplicate packets as Daudelin includes subject

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matter specifically directed for handling duplicate packets (Daudelin: Col. 2 lines 48-Col. 3 line 4 and Col. 5 lines 30-37)

2.B Appellant argues on page 14 of the brief:

In regard to this point, the Advisory Action states:

"The Examiner does not see how a 'pending retry time expires' equates to a retransmission request. Applicant's specification indicates a retransmission request would be a request received from a reception side (see for example page 3 lines 1-11 [of the Specification]). The retry timer of Daudelin is simply a timer that allows for retransmission of packets after a certain time. There is no request involved (particularly a request received from a reception side) with the timer or the subsequent retransmission of a packet moved out of the pending retry state. (Page 3, lines 2-5 [of Daudelin])"

Appellant respectfully disagrees with the above statements.

First, the Examiner, pointing to Page 3 lines 1-11 of the Specification, erroneously construed the term "without a retransmission request" recited in claim 12 as "without a retransmission request from reception side." The invention of claim 12, however, is not limited in this manner. Indeed, Page 3 lines 1-11 of the Specification refers to "a transmission means" as recited in claim 1, as opposed to "reception means" as recited in claim 12. Furthermore, the paragraph starting from Page 4 line 24 of the Specification states:

"According to a fourth aspect of the present invention, there is provided a packet reception system comprising: reception means capable of receiving same packets allocated packet identification information once or a plurality of times without a retransmission request ..." (emphasis added.)

The "retransmission request" as recited in claim 12 and the above embodiment does not limit the retransmission request to be a request from the reception side.

Appellant respectfully submits that it is the claims, instead of the certain exemplary embodiments of the Specification, that limit the scope of the invention.

Examiner's response to argument 2.B:

The examiner's statements in the Advisory Action was attempting to give the best reasonable interpretation of what constitutes a "retransmission request". The specification gives no explicit definition of a "retransmission request", particularly in terms of structure, protocol and delivery mechanism. So the examiner relied on examples which include a request received from a reception side (page 3 lines 1-11 of the instant specification) to best determine what a "retransmission request" is.

Particularly, page 3, lines 1-11 of appellant's specification states,

"reception system which enable a reception side to receive a normal simultaneous packet without the need for the reception side to transmit a simultaneous packet retransmission request"

and

" transmission means for transmitting said packet allocated said packet identification information a plurality of times even if the packet transmission system does not receive a retransmission request from a reception side".

The examiner believes this description coincides with how one of skill in the art would normally interpret the idea of a retransmission request. Clearly if a receiving entity didn't receive a packet, it can send a retransmission request message to the transmitter to cause retransmission. This exemplary description in combination of what one skilled in the art would expect led the examiner to simply interpret the retransmission request is

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a form of message specifically requesting retransmission. The examiner acknowledges the claims do not define the request is necessarily from the reception side. The advisory action never stated that the claims did. Instead the advisory action states there is no retransmission request of any kind in Daudelin as the expiration of a retry timer is no way similar to a request message requesting retransmission as described in the specification (more information on this below).

2.C Appellant argues on page 15 of the brief:

“Second, as explained above, Daudelin teaches “when the pending retry timer expires ... moves all queues associated with the pending retry timer out of the pending retry state, enabling their packets to be transmitted again.” On the other hand, if the pending retry timer does not expire (e.g. is not started), the packets would not be transmitted again. Thus, the expiration of the pending retry timer clearly constitutes a retransmission request, teaching away from the features recited in claim 12.”

Examiner’s response to argument 2.C:

Appellant is loosely and incorrectly construing the expiration of the retry timer to equate with a “retransmission request”. It is not clear as to how a retry timer starting or not starting indicates a “request” as appellant is arguing. One skilled in the art would not interpret an expiring retry timer of a transmission entity to be a “retransmission request”. It is nonsensical that a transmitting entity would be requesting itself to retransmit a packet. Based on the examples in appellant's specification (page 3 lines 1-11), it is not clear as to how appellant is construing the expiration of a timer to be a “retransmission request”, particularly when the specification gives no description or

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example of a situation where the retransmission request is generated and received by the transmitting entity itself. In Daudelin, the expiration of the retry timer and subsequent retransmission of a packet is merely a function of the transmitting side that allows duplicate packets to be transmitted **without a retransmission request**. In other words, the retry time expiration is not a request message, but rather is what allows Daudelin to not have to use retransmission requests. This subsequently means the receiving side will receive duplicate packets without a retransmission request. As such, Daudelin is within the scope of the claimed subject matter of claim 12.

Furthermore, taking appellant's interpretation into consideration would cause contradiction with appellant's claimed subject matter. Inherently in appellant's claimed invention, at some point a processor or processing entity of the transmitting side would make the decision or execution of instructions to send a duplicate packet. It would seem that if applicant construes an expiring retry timer, simply an executed function, to be a "retransmission request", then why wouldn't the decision/execution of sending a duplicate packet not also be construed as being a "retransmission request". Such an interpretation would seem reasonable based on the application of appellant's own rationale. As such Appellant's interpretation of a "retransmission request" is inherently in conflict with the "without a retransmission request" limitation.

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2.D Appellant argues on page 16:

In arguing claims 13-14 and 16-23, appellant relies on the arguments presented for 2.A-2.C above. As such the examiner relies on the corresponding responses above as a response for 2.D.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/David Lazaro/

Primary Examiner, Art Unit 2455

August 28, 2009

Conferees:

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2455

/DAVID Y. ENG/

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